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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

CC Docket No. 96-98

REPLY COMMENTS OF
MARGARETVILLE TELEPHONE CO., INC.

Margaretville Telephone Co., Inc. ("Margaretville") hereby replies to comments filed in this proceeding that addressed issues arising under the Just Compensation Clause of the Fifth Amendment. 1/

Margaretville is an "incumbent local exchange carrier" ("ILEC") as such is defined by the Telecommunications Act of 1996 ("1996 Act"). 2/ It provides local exchange service in two counties in rural New York State. Accordingly, Margaretville has a cognizable interest in the regulations that will implement the "additional obligations" imposed on ILECs by Section 251(a) of the 1996 Act. 3/

Margaretville agrees with those commenters who argue that implementation of Section 251(c) of the 1996 Act will entail compensable "takings" under the Fifth Amendment. 4/ For those takings

1/ See, e.g., Comments of GTE Service Corp., at 65-71 ("GTE Comments"); Comments of SBC Communications, Inc., at 65-66 & n.135; Comments of US West, Inc., at 23-38 ("US West Comments").

2/ See 1996 Act, Pub. L. No. 104-104, § 101(a) Sec. 251(h) (to be codified at 47 U.S.C. § 251(h)).

3/ See *id.* at Sec 251(c) (to be codified at 47 U.S.C. § 251(c)).

4/ See US West Comments, at 25-32; GTE Comments, at 66-71.

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to be constitutional (and assuming that Section 251 itself is constitutional under the Public Use Clause of the Fifth Amendment), a Fifth Amendment just compensation remedy must be provided as a "constitutional obligation". *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 315 (1987).

The Commission obviously is bound by the Constitution. *See, e.g., Meredith Corp. v. FCC*, 809 F.2d 863, 874 (D.C. Cir. 1987). Consequently, to implement Section 251 in accordance with the Fifth Amendment, the Commission must adopt a reasonable, certain and adequate process for ILECs to exercise their constitutional right to just compensation. *See Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-95 (1985).

Congress obviously intended that "requesting telecommunications carriers" bear the constitutional obligation to pay just compensation for any taking under the 1996 Act. ^{5/} Therefore, in order to avoid exposing the Treasury to liability under the Tucker Act, *see generally Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441, 1445 (D.C. Cir. 1994), the Commission should incorporate an adequate Fifth Amendment remedy in any compensation arrangement to implement the interconnection, unbundled network elements, and collocation provisions of Section 251(c).

In adopting a just compensation process, the Commission must consider that intangible interests derived under state law can be

^{5/} *See* 1996 Act, § 101(a) Sec. 252(a)(1) (to be codified at 47 U.S.C. § 252(a)(1)).

property for the purposes of the Fifth Amendment. See *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001-4 (1987). Margaretville submits that interests derived by ILECs from their state-chartered local monopolies qualify as protectible property interests. ILECs are entitled to just compensation insofar as the implementation of Section 251 frustrates their "reasonable investment-backed expectation" to operate as natural monopolies under state charters. *Id.* at 1011-14.

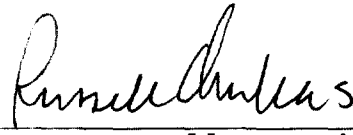
The obligations and responsibilities imposed on ILECs by the 1996 Act were designed to open monopoly telecommunications markets to competitive entry. Congress not only preempted state regulatory barriers ^{6/}, but it "boldly" moved to restructure the local telecommunications market to deprive ILECs of the competitive advantages they acquired as regulated monopolies. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-182, at 6 (released Apr. 19, 1996). In particular, Congress "free[d] new entrants from having to build facilities" to minimize the competitive advantages ILECs acquired by investing in their own local networks. See *id.* at 6. Clearly, the 1996 Act was intended to divest ILECs of their "reasonable investment-backed expectation" to hold competitive advantages over new market entrants. That divestiture constitutes a compensable taking of property interests under *Ruckelshaus*. See 467 U.S. at 1011-12.

^{6/} See 1996 Act, § 101(a) Sec. 253 (to be codified at 47 U.S.C. § 253).

The economic value of the property rights ILECs hold in their state-sanctioned, regulated monopolies "lies in the competitive advantage over others". *Ruckelshaus*, 467 U.S. at 1012. ILECs are entitled to recover that value when those advantages are taken away by the Government pursuant to 1996 Act.

Respectfully submitted,

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